

February 16, 2001

STATE WATER RESOURCES CONTROL BOARD
SACRAMENTO, CALIFORNIA
MARCH 1, 2000

ITEM: 1

SUBJECT:

PROPOSED WATER RIGHT DECISION REGARDING PROTECTION OF FISHERY RESOURCES AND OTHER ISSUES RELATING TO DIVERSION AND USE OF WATER FROM THE LOWER YUBA RIVER

DISCUSSION:

The State Water Resources Control Board (SWRCB) conducted 14 days of hearing in 1992 and 13 additional days of hearing in 2000 to consider measures to protect fishery resources on the lower Yuba River. The SWRCB held the hearing in response to a complaint filed by a coalition of fishery groups and a request by the Department of Fish and Game (DFG) to revise the water right permits of Yuba County Water Agency (YCWA). DFG requested that YCWA's permits be amended to establish higher minimum instream flow requirements and maximum water temperature requirements based on recommendations in DFG's 1991 Fisheries Management Plan for the Lower Yuba River. The DFG recommendations are intended to protect fall-run chinook salmon, spring-run chinook salmon, steelhead, and American shad. Spring run chinook salmon are listed as a threatened species under the state and federal Endangered Species Acts. Steelhead are listed as a threatened species under the federal act.

YCWA holds the largest water rights on the Yuba River. YCWA owns and operates New Bullards Bar Reservoir with a storage capacity of approximately one million acre-feet. YCWA's water right permits authorize diversion of water for irrigation, municipal use, and protection of fish and wildlife. YCWA provides water to several other water districts and water users in Yuba County. YCWA holds separate water right licenses for generation of hydropower that are not the subject of the proposed decision.

The SWRCB approved distribution of a proposed water right decision dated November 7, 2000, that requires measures to protect fishery resources in the lower Yuba River and to ensure that water diversions from the lower Yuba River are made pursuant to a valid water right. The SWRCB heard extensive public comments on the draft decision at public meetings on December 4, 2000, and January 11, 2001. Based on the SWRCB's consideration of the issues raised in the comments and the consideration of the critical power supply situation in California, the proposed decision has been revised in four major respects:

- The long-term instream flow requirements in the proposed decision for some months of some water year-types have been reduced from the flows specified in the November 7, 2000 draft decision.
- Due to the critical electrical energy situation in California, the proposed decision has been revised to defer the effective date of the new long-term flow requirements applicable to YCWA's permits for a period of five years, until April 21, 2006. For the interim period, the proposed decision establishes instream flow requirements based on the flows recommended by YCWA. The interim instream flow requirements for dry, critical and extreme critical years are lower than the long-term flow requirements specified in the proposed decision. The interim flow requirements will allow for greater flexibility in generation of hydroelectric power at Yuba River facilities.
- The proposed decision includes a clause that allows for temporary modification of the flow requirements that would otherwise apply in any year in which the projected deficiency in deliveries for offstream uses exceeds 20 percent of projected demand.
- The proposed decision includes an expanded discussion of the application of the public trust doctrine to YCWA's water right permits.

In addition, the proposed decision includes several changes and corrections made in response to written and oral comments on the November 7, 2000 draft decision. The major provisions of the proposed decision, as revised, are as follows:

- The decision revises the minimum instream flow requirements specified in YCWA's water right permits. The increased instream flow requirements are based on evidence from DFG, the U.S. Fish and Wildlife Service, and other parties to the water right hearing before the SWRCB. The instream flow requirements established in the decision are similar to recommendations made by YCWA, except for years that are classified as dry, critical, or extremely critical. For those years, the decision establishes revised flow requirements that are lower than recommended by DFG, but higher than recommended by YCWA. Based on hydrologic data, water use records, and the results of computer modeling, the decision concludes that there will be sufficient surface water available from the lower Yuba River to meet the revised flow requirements and water demands for offstream uses in Yuba County in most years. In years in which there is insufficient surface water available from the lower Yuba River to meet all offstream demands, the decision finds that most of the deficiencies can be made up through water conservation and conjunctive use of groundwater. As stated above, the proposed decision also includes a provision allowing for temporary modification of instream flow requirements in those years in which the projected deficiency in the amount of water available for offstream uses exceeds 20 percent of projected demand. Due to the critical energy situation, the proposed decision establishes a five-year period in which lower minimum flow requirements would apply.
- The decision directs YCWA to diligently pursue its application for funding of the Narrows II Powerhouse Intake Extension Project at Englebright Reservoir located

downstream of New Bullards Bar Reservoir. The project would allow YCWA to maintain cooler water in the lower Yuba River as recommended by DFG, the federal fishery agencies and public interest groups. The decision does not establish maximum water temperature requirements due to evidence from YCWA that compliance with such requirements would not be feasible. Until the powerhouse intake extension is constructed, the decision directs YCWA to meet with a Water Temperature Advisory Committee on an ongoing basis and advise the Chief of the Division of Water Rights if the project cannot operate in accordance with the recommendations of the committee.

- The decision directs YCWA and water districts diverting water from the lower Yuba River at two major diversion facilities to consult with DFG and federal fishery agencies and prepare a plan to reduce loss of fish at those diversions.
- The decision requires a number of other actions to ensure that diversions of water from the lower Yuba River are made pursuant to valid water rights and to minimize potential adverse impacts on fishery resources.

The SWRCB has broad authority to modify YCWA's water right permits based on the public trust doctrine, the reasonable use and diversion criteria under article X, section 2 of the California Constitution and the Water Code, and the SWRCB's continuing authority over YCWA's water right permits. The instream flow requirements in the proposed decision implement the requirement of Fish and Game Code section 5937 to release or bypass sufficient water from YCWA facilities to maintain downstream fish in good condition.

POLICY ISSUE:

Should the SWRCB adopt the proposed decision regarding protection of fishery resources and other water right issues relating to diversion and use of water from the lower Yuba River?

FISCAL IMPACT:

This activity is budgeted within existing resources and no additional fiscal demands will occur as a result of approving this item.

REGIONAL BOARD IMPACT:

None

STAFF RECOMMENDATION:

Staff recommends that the SWRCB adopt the proposed decision as revised.

Policy Review _____
Legal Review _____
Fiscal Review _____